

REMARKS

Upon entry of the present Amendment the Claims under consideration are 15, 17, 19, 20, 22, and 24. The Detailed Action of 15 December 2003 will now be addressed with reference to the headings and any paragraph numbers therein.

Election/Restriction

In the Office Action mailed 28 August 2003, the Examiner divided the claims of the subject application into three separate inventions, requiring Applicants to elect one of the three inventions, and if article claims were elected, to further elect a species represented by one of four figure groupings and three different Claims. The Examiner stated that Claims 1-16, 20 and 22 were generic.

Applicants responded as required, and elected the article claims of Group II, namely Claims 15-26, and further elected the species of Figures 3-5 and the article of Claim 24. The Detailed Action has withdrawn Claims 1-14, 16, 18, 21, 23, and 25-27 from further consideration.

Applicants have reviewed the withdrawn Claims and see nothing in Claim 21 which warrants its withdrawal. Claim 21 is dependant from Claim 15 and contains no limitations inconsistent with the species described by Claim 24. The Examiner is therefore respectfully requested to reinstate Claim 21 for further consideration.

Specification

Per paragraphs 3 and 4 of the Detailed Action, several of the drawings and points of the description stand objected to. Applicants herewith submit proposed amendments to the drawing Figs. 2 - 10 and believe all objections have been obviated thereby. Specifically, the lead lines of reference numbers 22 and 36 of Figs. 2 and 3 have been made dashed and reference number 16 and its lead line have been eliminated from Fig. 2. The description of Fig. 3 has been changed in the specification to make clear the liner is not represented. In Fig. 4, element 70 and its lead lines have been made dashed. In Figs. 5 and 6 the lead lines of ref. nos. 64, 65 and 81 have been dashed, respectively. In Fig. 7 the side panels have been renumbered per the Examiner's suggestion and ref. nos. 55 and 57 and their lead lines have been eliminated. In Fig. 8 the interior and exterior surfaces have been renumbered per the Examiner's suggestion. Arrowheads have been added to Fig. 9 per the Examiner's suggestion and the lead line to ref. no. 44 has been dashed. The lead line of ref. no. 156 in Fig. 10 has been lengthened. Applicants will have the changes incorporated into formal drawings when approved by the Examiner.

In the specification, amendments have been submitted to comport the text with the drawings. Further, "Kraton" has been capitalized in each instance throughout the specification and generic terminology added where appropriate. Applicants wish to thank the Examiner for her helpful suggestions.

Claim Rejections -35 USC §102

Per paragraph 8 of the Detailed Action, Claims 15, 17, and 19-20 stand as anticipated by Roe et al. (U.S. Patent 5,749,866, hereinafter Roe). It is the contention of the Detailed Action that because Roe is extensible in the transverse direction and includes longitudinal elastic members 54, it teaches each and every limitation of the present Claims. Applicants respectfully traverse the rejections.

Roe teaches integration of a “structural elastic-like film (SELF)” into various components of the disposable absorbent garment. Roe does not teach any deliberate arrangement or properties of its materials such that the “tensioning force [is] sufficient to produce extension of the flap in the transverse direction” as required by Claim 15. Each of additional Claims 17 and 19-20 are dependent from Claim 15 and incorporated this limitation. The present invention teaches and claims a containment flap which is not merely extensible in an inchoate sense, but which actually undergoes extension of its transverse dimension when tensioned by loading of the diaper (see e.g. page 3, line 8 of the specification).

Therefore, Roe cannot and does not anticipate the present Claims of the invention. It is therefore respectfully requested that the present rejection be withdrawn. If the Examiner feels that further language should be added to the claims to make clear this important distinction, she is invited to call Applicants’ undersigned attorney to suggest such clarifying language.

Per paragraph 9 of the Detailed Action, Claims 15, 17, 19-20 and 22 stand as

anticipated by Serbiak et al. (U.S. Patent 5,846,232, hereinafter Serbiak). It is apparently the contention of the Detailed Action that because Serbiak teaches a necked liner and outer cover and includes elastic elements therebetween, and that because Serbiak has leg cuff areas with elastic elements 40, it teaches each and every limitation of the present Claims. Applicants respectfully traverse the rejections.

Serbiak is generally drawn to an extensible garment chassis with retraction properties. It is respectfully noted that the Serbiak leg cuff areas with elastic elements 40 are merely traditional leg cuff arrangements. This arrangement is not taught as, and cannot be deemed to be, a teaching of containment flap elements within the meaning and understanding of the art. Applicants respectfully note that Serbiak is unconcerned with and does not teach any containment flap elements. Each of additional Claims 17, 19-20, and 22 are dependent from Claim 15 and incorporate all limitations with regard to containment flaps. Therefore, Serbiak cannot and does not anticipate the present Claims of the invention. It is therefore respectfully requested that the present rejection be withdrawn.

Claim Rejections -35 USC §103

Per paragraph 10 of the Detailed Action, Claim 24 stands as obvious over Serbiak in view of Morman *et al.* (U.S. Patent 6,472,045, hereinafter Morman).

It is the contention of the Detailed Action that Serbiak teaches all elements of the present Claims except that of bicomponent fiber usage and that Morman teaches the interchangeability of polyolefin and bicomponent fibers in a nonwoven web. Applicants hereby incorporate their above arguments with respect to the lack of teachings of Serbiak regarding containment flaps. Because neither reference teaches the specific properties of the present Claims, their combination cannot be deemed to render the present invention obvious. Therefore, a *prima facie* case of obviousness has not been made by the Detailed Action and the present rejection must be withdrawn.

It is further noted generally that none of the cited references teach the specific properties of basis weight, Young's modulus, or permeability necessary to achieve the desired functionality of the present invention. It is again therefore respectfully requested that the present rejection be withdrawn.

For all the foregoing reasons, the Claims as presently amended are believed to be allowable over the art of record. A notice to that effect is earnestly solicited.

Request For Telephone Interview

Clearly, there are differences between the present invention and the cited references involving patentable subject matter. These differences are now believed by the Applicants to be properly defined in the present Claims. The Examiner is requested to call



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Applicants' attorney (per the provisions of M.P.E.P. § 713) to discuss any further problems or suggest solutions in defining the present invention in order to expedite the case towards allowance before issuing a final Office Action.

Favorable consideration is requested.

Respectfully submitted,

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Annotated Sheet Showing Changes

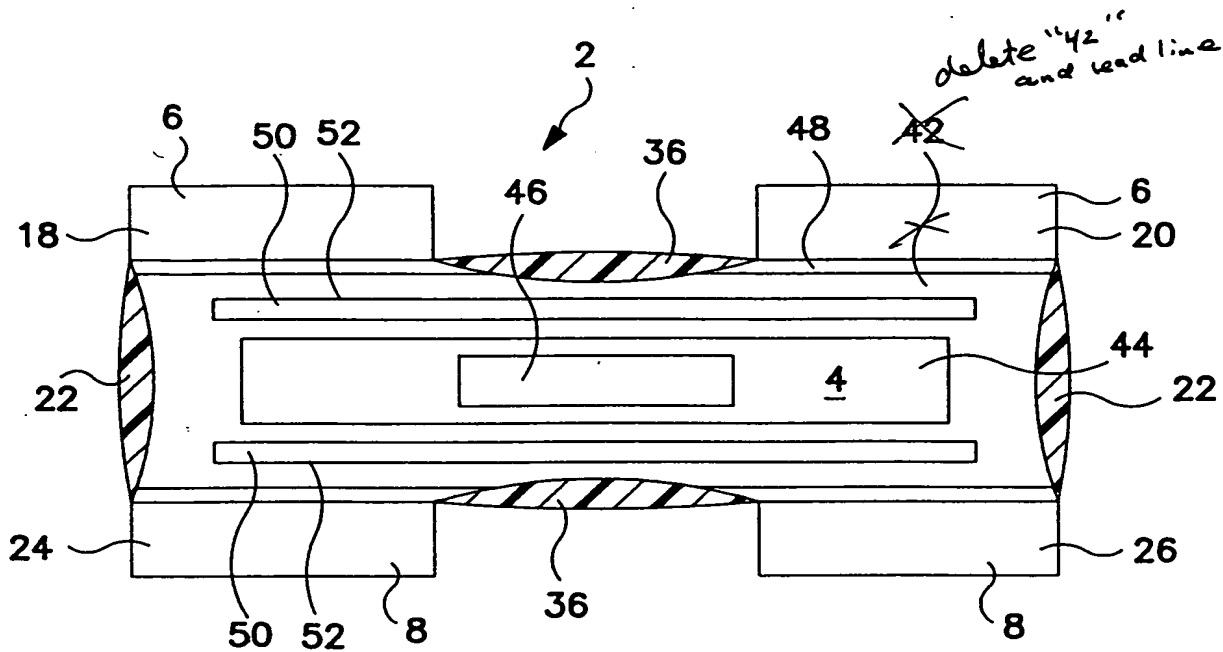


FIG. 3

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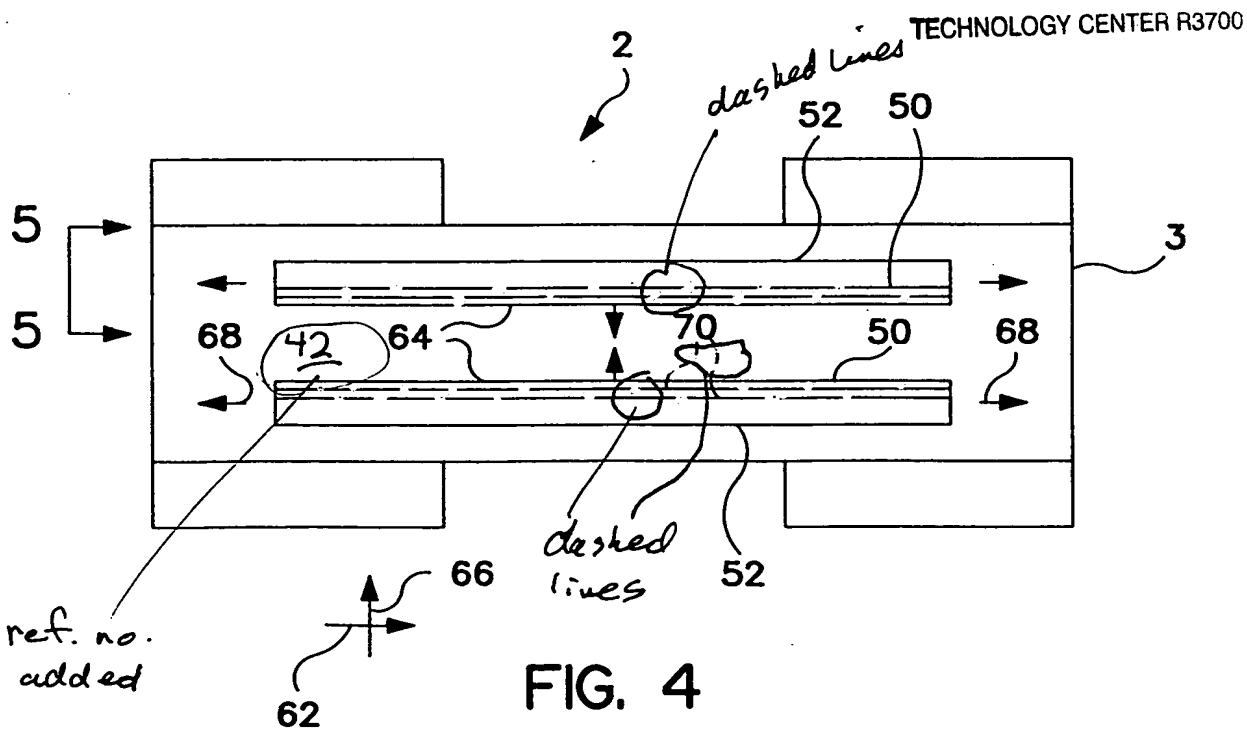



FIG. 4



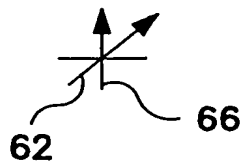
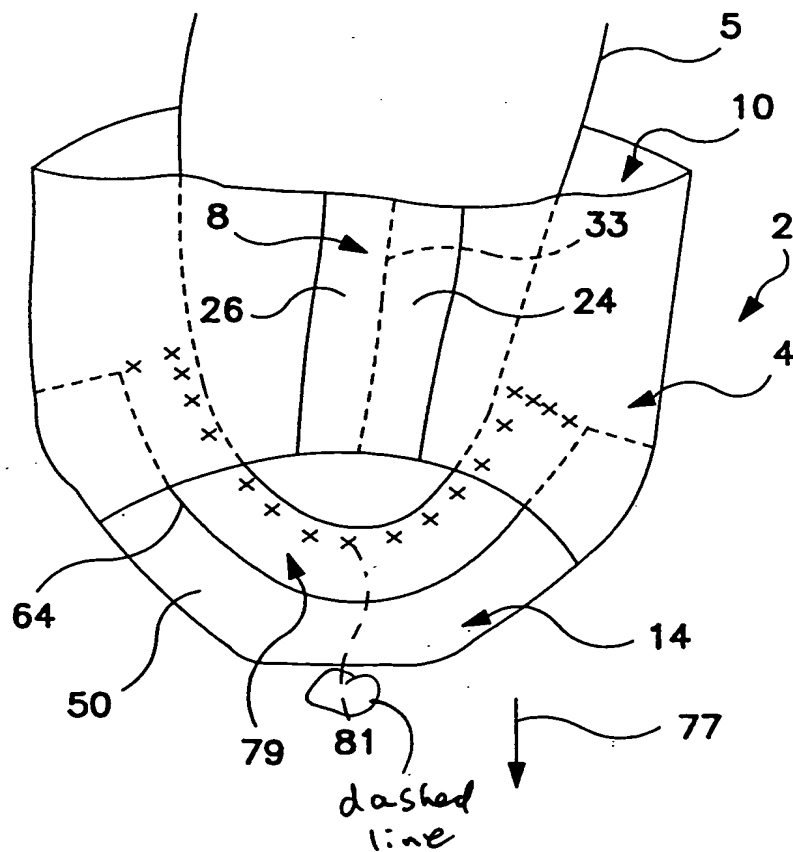


FIG. 5

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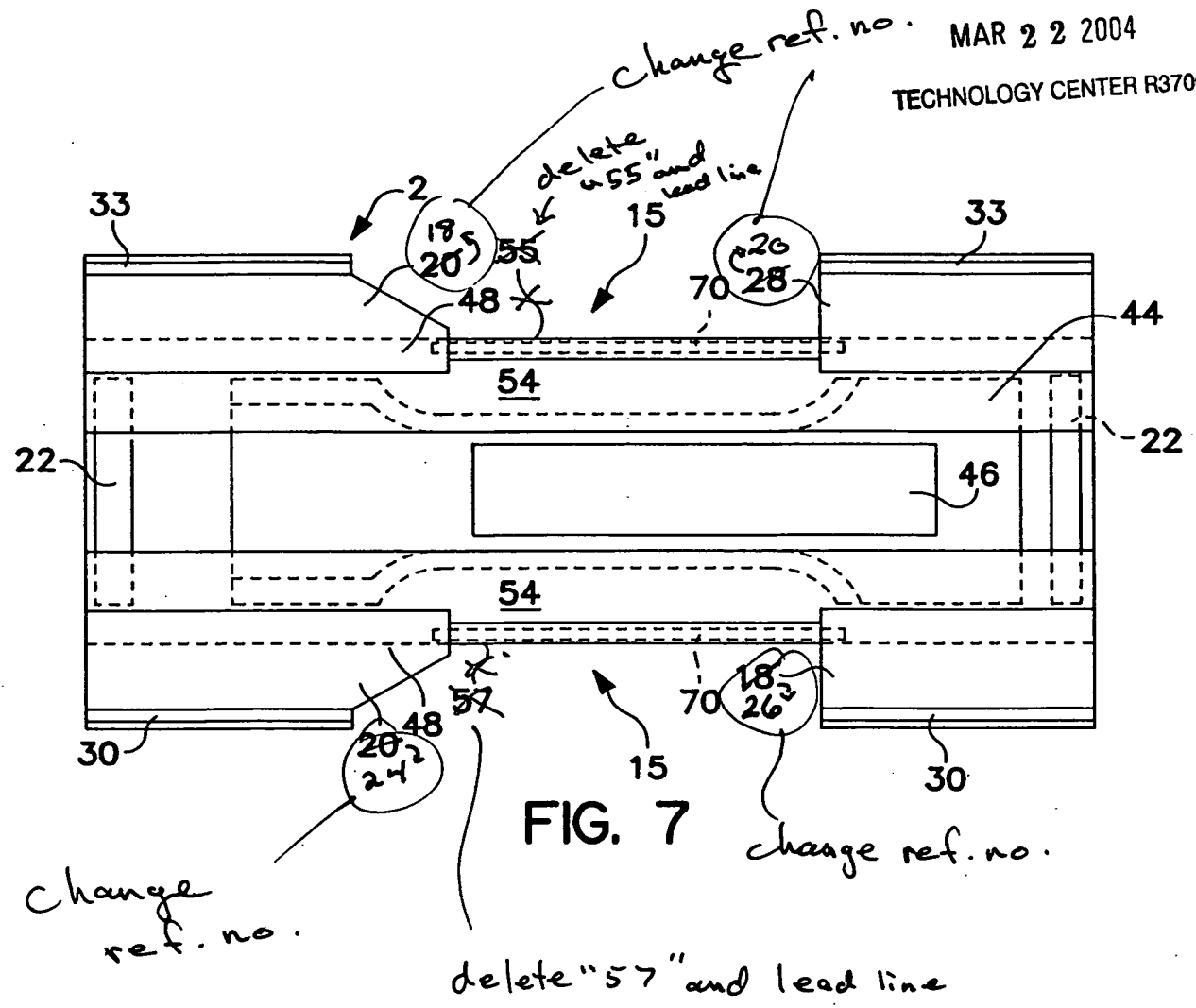


FIG. 7



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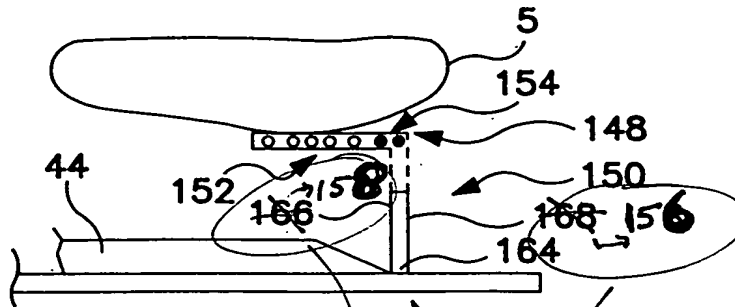


FIG. 8

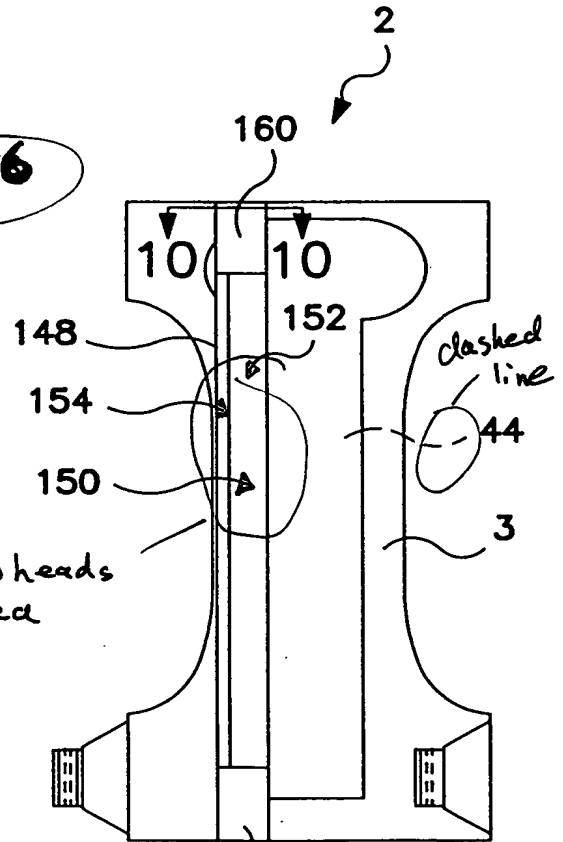


FIG. 9

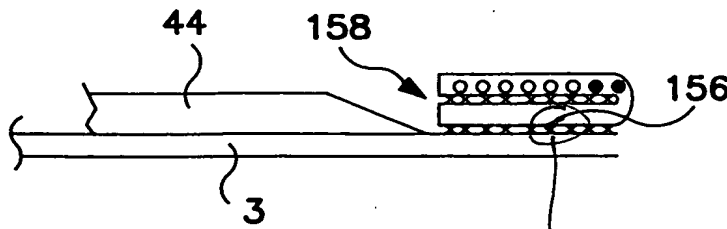


FIG. 10

lead line
lengthened